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payment of the annuity, to the exclusion of all other objects of his bounty.

**5. Same.**—All of testator's children shared equally in the property so loaned, upon the widow's remarriage or death.

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NEAL & BINFORD *v.* TAYLOR.

March 14, 1907.

[56 S. E. 590.]

**1. Sales—Contract—Construction.**—A company sold defendants tobacco, to be paid for in "No. 1 ground Angostura tonka beans," and in a letter stated, "Understand we want the best article and perfectly pure." Various quantities of apparently unadulterated ground beans were furnished; the company not knowing that they were adulterated. The company's receiver notified defendants that they would be released from the cost of grinding the beans remaining undelivered and that only unground ones would be accepted. Held, that the contract required defendants to deliver pure unadulterated ground tonka beans, and that an adulteration containing 35 per cent. barytes and exhausted ginger was not a compliance with the contract; and authorized the receiver to stop the grinding and refuse the adulterated product tendered.

**2. Same—Evidence—Weight.**—Where defendants contracted to deliver pure ground Angostura tonka beans to a tobacco company, evidence held to show that all deliveries were adulterated, but of an apparently pure article, and that defendants knew the beans delivered were accepted under the belief that they were pure.

**3. Same—Adulteration—Duty of Seller to Disclose.**—Where defendants contracted to deliver pure ground Angostura tonka beans to a tobacco company, it was their duty to disclose any material adulteration, unless the same was known to the company; and in the absence of such knowledge an acceptance of an adulterated article would not prejudice the company's nor the receiver's right to demand further deliveries of unadulterated beans.

**4. Appeal—Review—Harmless Error—Instruction.**—Though an instruction be erroneous, if, from the evidence, no other verdict than one against the complaining party could have been rightly found, the judgment will not be reversed.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 3, Appeal and Error, § 4033.]

**5. Trial—Refusal of Instructions—Inapplicability.**—Where there was no evidence to sustain an instruction, it was properly refused.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 46, Trial, §§ 596-612.]